

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-129251-09

Date:

August 19, 2009

## LEGEND

Seller =

Parent =

Sub1 =

Sub2 =

StateA =

Year1 =

Year2 =

Year3 =

DateA =

DateB =

DateC =

x =

y =

Parent Official =

Tax Professional =

Dear :

This letter responds to a letter dated June 12, 2009, submitted on behalf of Parent, requesting the Internal Revenue Service ("Service") to grant an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested in order to allow Parent to file an election under § 1.1502-91(d)(4) of the Income Tax Regulations (hereinafter referred to as "the Election") to treat the loss subgroup parent requirement as satisfied with respect to Sub1 and Sub2 for the consolidated group of which Parent was the common parent for Year1. Additional information was received in subsequent correspondence dated July 21, 2009, and August 5, 2009. The material information is summarized below.

Parent, a StateA corporation, is the common parent of a consolidated group ("Parent Group") which files its tax returns on a calendar year basis. On DateA, Parent purchased all the stock in two domestic subsidiaries, Sub1 and Sub2, from Seller. Sub1 and Sub2 simultaneously became members of Parent's consolidated group and they had net operating loss carryovers ("NOL carryovers") in the amount of x and y, respectively. Prior to the acquisition, Sub1 and Sub2 were members of the Seller consolidated group, but did not bear the relationship described in § 1504(a)(1) of the Internal Revenue Code ("Code") through a loss subgroup parent immediately after the acquisition (the "loss subgroup parent requirement").

The Election was required to be filed with Parent's income tax return for its Year1 tax year. Parent's return for Year1 was timely filed on DateB. However, for various reasons, the Election was not filed. Subsequently, it was discovered that the Election

had not been filed. Thereafter, this request was submitted, under § 301.9100-3, for an extension of time to file the Election.

### REPRESENTATIONS

Parent has made the following representations in connection with this matter:

- (a) Parent and Seller were and are unrelated.
- (b) At all times subsequent to DateA up until the present, Parent has directly held all the stock in Sub1 and Sub2.
- (c) At all times subsequent to DateA up until the present, the failure to make the Election has not affected the income tax positions (including the amount of NOL carryovers utilized) as reported on the consolidated Federal income tax returns filed by Parent for Year1, Year2, and Year3.
- (d) As of the date the request for this ruling was submitted to this office, the Service had not contacted Parent, or any member of Parent Group, concerning Parent's failure to timely file the Election.
- (e) The period of limitations on assessment under § 6501(a) of the Code has not expired for Parent's (or any other Parent Group member's) Year1, or for any taxable year that would have been affected by the Election had it been timely filed. The period of limitations on assessment for Parent Group's Year1 will expire no earlier than DateC.

### APPLICABLE LAW

Section 1.1502-91(d)(4) provides that a consolidated group may elect to treat acquired corporations as meeting the loss subgroup parent requirement immediately after they become members of the group, if the common parent of the acquiring group makes an election with respect to those members.

Pursuant to § 1.1502-96(e), the election must state the following: "THIS IS AN ELECTION UNDER § 1.1502-91(d)(4) TO TREAT THE FOLLOWING CORPORATIONS AS MEETING THE REQUIREMENTS OF § 1.1502-91(d)(1)(ii) AND (d)(2)(ii) IMMEDIATELY AFTER THEY BECAME MEMBERS OF THE GROUP." [List separately the name of each corporation, its E.I.N., and the date it became a member of the group.] Section 1.1502-96(e)(3) provides that the statement must be filed by the common parent with the group's timely filed income tax return for the consolidated return year in which the members with respect to which the election is made become members of the group.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than

six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-1(b) defines the term “regulatory election.” Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (§ 1.1502-91(d)(4)(i) and § 1.1502-96(e)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided that Parent establishes that it acted reasonably and in good faith, that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the Government.

Information, affidavits, and representations submitted by Parent, Parent Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the present request for relief was submitted to this office prior to the Service discovering that the Election had not been timely made and that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election. See § 301.9100-3(b)(1)(i) and (v).

#### CONCLUSION AND GRANT OF EXTENSION

Based solely on the information and affidavits submitted and the representations made, we conclude that Parent has shown that it acted reasonably and in good faith in failing to file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the Government. Accordingly, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter (PLR-129251-09), for Parent to file the Election.

The above extension of time is conditioned on the taxpayers’ (Parent Group’s) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been made timely (taking into account the time value of money). No opinion is expressed as to the taxpayers’ tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers’ tax liability is lower. Section 301.9100-3(c).

## CAVEAT

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any matter or item discussed or referenced in this ruling letter. In particular, we express no opinion with respect to (i) whether either Sub1 or Sub2 had an NOL carryover; or (ii) whether Parent and its subsidiaries are entitled to file on a consolidated basis.

In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the Election late that are not specifically set forth in the above ruling. Notwithstanding that an extension is granted under § 301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

For purposes of granting relief under § 301.9100-3, we relied upon certain information, representations, and affidavits submitted by Parent, Parent Official, and Tax Professional. This office has not verified any of the material submitted in support of the request for rulings. The Director should verify all essential facts.

## PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching to the return a statement that provides the date and control number (PLR-129251-09) of this ruling letter.

Pursuant to a power of attorney on file in this matter, a copy of this letter is being sent to your authorized representative.

Sincerely,

*Ken Cohen*

Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Corporate)

cc: